

«Veni, vidi, veto...» hopes for timely beginning of official campaign vanish

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Few were surprised when on October 4 President Kuchma used his right of veto for the first time and rejected the law «On Election of People's Deputies of Ukraine», the most recent version of which had been approved by the Ukrainian parliament on September 13. On September 25, 2001, President Kuchma was quoted as publicly stating that he had no right to put his signature under the law if it «contained many articles that contradict the Constitution of Ukraine» (UNIAN, September 25, 2001).

The only thing that is known for sure about the forthcoming election race is that the polling day is set for the last week of March of the fourth year of service of the current parliament. This is stipulated in Article 77 of the Constitution of Ukraine and so far has not been questioned. Another thing which seems to be settled is that the election law will preserve the mixed 50:50 majoritarian-proportional system that was used for the previous elections. This provision, however, bears the risk of «conservation» of the current political situation in the state: as a result of shrinking opportunities for change of the politicians represented in the parliament, the Verkhovna Rada, the same political forces, probably with slight admixture of new and increasingly strong personalities, will continue painting Ukraine's political landscape.

It does not require much intellectual effort to see which of the current political forces benefit from the uncertainty and delay surrounding the adoption of the election law. The executive branch, the influential class of politicized (though mainly officially «nonpartisan») nomenclature will have tremendous influence on the course and results of the election campaign. The situation also benefits political parties that possess levers of administrative influence in the regions, the so-called «administrative resource» that allows using state-owned assets and official positions for promoting interests of client parties and individuals, and to parties that have direct influence on regional and national media. To an extent, the delay is good for political parties that have not made final decision as to joining forces with other parties and forming election blocks, and to those still in difficult process of making election lists - provided the parties have due resources for running a short but effective campaign.

It is likely that the winners of the situation will be newly-formed block and recently established political parties - for instance, the TUNDRa (the block of the Trudova Ukraina, the People's Democratic Party, the Agrarian Party and the Party of the Regions). Although having vast administrative and financial resources, the new parties and blocks are still struggling with finalizing their election lists and identifying leadership; therefore, the delayed official start of the election campaign leaves them some additional time for maneuvers.

The reduction of the official terms of the campaign is damaging for electoral prospects of political parties that, though having their traditional constituencies in the regions, well-known names and agendas, and the record of participation in the political process, do not have either access to the «administrative resource» or due support and coverage in the national and regional media. Such parties include both of the Rukhs and the Party of Reforms and Order. The situation is further complicated by the long-lasting process of forming a block under the aegis of Victor Yushchenko's Nasha Ukraina, settling the common election list and chances to be represented in it. The lack of the «administrative resource» and time may make it difficult for such parties to overcome the barriers of the campaign, the most obvious being the requirement to collect 500,000 signatures in support of the party (block) in order to have it officially accepted to the race by the Central Election Commission (CEC).

The most recent version of the election law, obviously, is far from ideal. According to CEC chairman Mykhailo Ryabets, the practice of collection of signatures by candidates and parties during the previous

campaign shows that «without due legal provisions it turns into formality which, in its turn, causes massive forgery of signature sheets and signatures» (Ukraina Moloda, September 28, 2001). Another drawback of the new version of the law, according to Ryabets, is the lack of clearly defined rights and duties of state entities in the election campaign process. In particular, there is a need for a more detailed definition of the procedure of challenging actions of state and local authorities at courts if they infringe on fairness and equality of the election process. However, the «old» (i.e., current) election law has many more such drawbacks, and the new version of the law looks much more democratic, as both right-wingers and left-wingers agree. According to leader of the Party of Reforms and Order Victor Pynzenyk, the new version «contains more transparent procedures of the elections and is progressive even without the proportional system that is advocated by the [Party of Reforms and Order]» (UNIAN, September 13, 2001). Leader of the Solidarity faction Petro Poroshenko believes it is positive that the new version of the election law has clear delineation of functions and rights of election commissions, and the overall transparency of the election process is increased. Even the Communists treat the new version of the election law with respect. According to Georgy Kriuchkov, if adopted, the new law will allow to run the elections «more transparently and fairly» which, however, «will not have the decisive effect in our particular circumstances» (UNIAN, September 13, 2001).

Hypothetically, one may assume that the remarkably difficult adoption of the new election law is linked to its relative clarity and transparency that would be able to make the 2002 election fairer.

The new version introduces - at least at the declarative level - more mechanisms to counter violations. Apparently, a number of players of the election race would feel more comfortable with the «old», less transparent rules of the game. As an illustration, one may consider some aspects of legal regulation of one of the most sensitive issues of political campaigning: the issue of financing the election campaign. During the 1998 election the matter of financing was almost completely not-transparent. Although the law demanded that all funding of any activities within the campaign be paid from a specially set bank account, the waves «black cash» were the main method of payment. According to Article 37, p. 12 of the 1997 election law, «money from the election funds may be used exclusively for needs of publicity campaign of a political party, election block of parties, candidate for MP. Usage of the election fund money for other purposes is prohibited.» However, the law did not provide for any mechanism that would enforce the stipulation and prevent violations. No limits of election funds were specified. After winning the seat in March 1998, a new MP elected in a majoritarian constituency, chairman of the board of the Pravex Bank publicly claimed he had spent over US\$ 1 million for his election campaign.

While the «old» law had only declarative provisions for regulation of campaign financing, the new, vetoes version regulated the issue more clearly. Article 36, p. 3 stipulates that «the upper limit of spending from the election fund of a political party (block) may not exceed 150 thousand untaxable minimum personal revenues [currently established as UAH 17], and, for a candidate running in a majoritarian constituency, - 10 thousand untaxable minimum personal revenues». Article 52, p.2 of the new version of the law stipulates that if the court judges that the party of block spent more than the legally specified amount, the CEC may cancel registration of the party or block.

Presenting President Kuchma's objections to the proposed law and explaining the new veto, Deputy Head of the Presidential Administration Leonid Pidpalov argued that under the new version of the law «all stages of the election process occur under control of [political] parties» (UNIAN, October 4, 2001). The criticism referred, in particular to the provision that election commissions were supposed to be formed only by political parties that had overcome the 4% barrier in 1998, i.e., the newer pro-presidential parties would be denied the right to send their representatives to the election commissions. The provision that caused criticism of the head of the state was introduced by Article 20 of the new law, which stipulates that «a regional election commission is formed by the Central Election Commission of 8 persons no later than 155 days before the polling day <...> by nomination (of no more than one person) by central authorities of parties (blocks) that gained four or more percent of voters who took part in the previous election of people's deputies of Ukraine.» According to President Kuchma, the provision gives substantial privilege to the nine winners of the 1998 race. In his opinion, the procedure would make it impossible to form effective election commissions, as the Rukh has split up, so did the Socialist-Peasant block, and the status of Pavlo Lazarenko's Hromada is totally unclear. Obviously, Article 20 does not appeal to new strong political parties and party leaders that won seats in the parliament in majoritarian constituencies and formed their parties and factions in 1999-2000 - like, for instance, the Party of the Regions and the Democratic Union. According to the Democratic Union leader Oleksandr Volkov, his faction is «not content with the principle of formation of regional election

commission ... [as it does not take into account] rights of majoritarian deputies who are equal participants of the electoral process» (UNIAN, October 4, 2001). Similar worries may be shared by leaders of the Batkivshchyna, the Party of Reforms and Order, the Congress of Ukrainian Nationalists, the National Salvation Forum, etc.

Hence, President Kuchma suggests that the law specified more clearly the qualitative and quantitative composition of regional election commissions so that to ensure that they work more effectively. According to the president, local election commissions should consist of 8 to 20 members. Again, the issue who will form those commissions and based on what principles remains unsolved.

A major stumbling block for debates over the new election rules is the proposed reduction of the election campaign. While President Kuchma insists on reducing the term to 90 days, MPs voted for 170 days. According to Leonid Kuchma, such a long term of campaign (the previous campaign was 180 days, though) will be too burdening for the national budget.

Another issue is the mechanism of ensuring fairness and transparency of the election process. According to the version of the law passed on September 13, information about elections may be provided only by election commissions and state agencies, but the parties themselves, although active participants of the process, do not have to disclose any information. According to the law, any media outlet is obliged to comply with demand of a political party and refute the information it has published or broadcast if that information is not true. However, the mechanism and criteria for judging the truthfulness of the information is not provided.

The very date of the official start of the race is still unclear. At the end of September, when sources from the Presidential Administration indicated that the new version of the law would be vetoed again, head of the CEC Mykhailo Ryabets announced that a legal collapse of the election process might occur on October 12. Yet, the current law has over 20 provisions that have been judged unconstitutional by the Constitutional Court of Ukraine, which may challenge the legitimacy of elections and their potential outcome. «Therefore, today nobody in Ukraine can say when the election campaign will start. Nobody can say because there is no other provision of the law except the unconstitutional [one], said Ryabets (Den, September 27, 2001).

On October 8 the parliamentary Committee for State Building and Local Self-governance will adopt recommendations for further fate of the vetoed version of the election law. Head of the Committee Yuliy Ioffe suggests that an updated version will incorporate proposals made by President Kuchma and will be voted by the parliament on October 18. However, there is a chance that the voting will take place on October 9, as Georgy Ponomarenko, co-author of the bill and head of the committee's working group in charge of preparing the draft, suggests. In his opinion, according to the «old» (current) election law, on October 12 the CEC had to announce the official start of the election campaign, but the Constitutional Court had judged a number of articles of that law unconstitutional. Hence, the problem is whether the MPs will manage to overcome the veto by October 12 (which is unlikely) or consider the changes proposed by the President and agree on all unsettled issues. If the race is formally opened on October 12, it is unclear which rules will be applied. The MPs have only a few days to search for compromise while the election campaign de facto goes on without any rules.